

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

KOCH ENERGY SERVICES, LLC,

Plaintiff,

v.

GREY FOREST UTILITIES,

Defendant.

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CIVIL ACTION NO. 5:22-cv-00032

**PLAINTIFF KOCH ENERGY SERVICES, LLC’S COMPLAINT AGAINST
DEFENDANT GREY FOREST UTILITIES**

Plaintiff Koch Energy Services, LLC (“Koch Energy”) files this Complaint against Defendant Grey Forest Utilities (“the Utility”) as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity of citizenship exists between the parties.

2. The Utility is subject to the personal jurisdiction of this Court because it is a Texas resident.

3. Venue is proper under 28 U.S.C. § 1391 because the Utility resides and conducts business in the Western District of Texas and a substantial part of the events or omissions giving rise to the claim occurred within the Western District of Texas.

PARTIES

4. Plaintiff Koch Energy Services, LLC is a limited liability company. Koch Energy Services, LLC’s sole member is Koch Energy Holdings, LLC, whose sole member is KAES Domestic Holdings, LLC, whose sole owner is KAES Equity Holdings, LLC, whose two members

are KAES Investor, LLC and Koch Ag & Energy Solutions, LLC. KAES Investor, LLC's sole member is Koch Ag & Energy Solutions, LLC, whose sole member is Koch Resources, LLC, which is wholly owned by Koch Industries, Inc., which is incorporated and maintains its principal place of business in Kansas.

5. Defendant is a gas utility owned by the City of Grey Forest, Texas, and regularly conducts business with customers in the City of San Antonio, Texas, and other parts of Bexar County, Texas. Defendant may be served with process by serving the City of Grey Forest Secretary, Miguel Cantu, or his successor or designee, at 18502 Scenic Loop Road, Grey Forest, Texas 78023.

INTRODUCTION

6. This case is a simple breach of contract matter concerning natural gas sales during February 2021 according to the terms of contracts between Koch Energy and the Utility.

7. According to contracts between the parties, Koch Energy provided certain volumes of natural gas to the Utility from February 1–28, 2021.

8. During February 2021, Texas experienced extreme winter weather that resulted in an increased demand for—and decreased supply of—natural gas.

9. Although the supply of natural gas available for sale was low during this time, Koch Energy took all steps necessary to source natural gas to provide to the Utility, which serves human needs in and around San Antonio.

10. Subsequently, and in accordance with their regular business dealings, Koch Energy invoiced the Utility for the natural gas it sold to the Utility during February 1–28, 2021.

11. The Utility has paid only a small portion of Koch Energy's invoice for gas sales during February 1–28, 2021, despite repeated contacts and acknowledgment of the outstanding

invoice. It has ceased doing business with Koch Energy and is no longer responding to correspondence or calls.

12. Due to the Utility's refusal to pay Koch Energy's invoice in full or even discuss the matter, Koch Energy now seeks the assistance of this Court to recover sums it is owed under the parties' contracts.

FACTUAL BACKGROUND

A. Koch Energy Delivers Gas to the Utility Pursuant to the Parties' Contracts.

13. Koch Energy buys and sells natural gas as a commodity. In this line of business, on March 26, 2013, Koch Energy entered into a North American Energy Standards Board, Inc. Base Contract for Sale and Purchase of Natural Gas ("Base Contract") with the Utility to govern sales and purchases of natural gas between the parties.

14. On October 16, 2019, Koch Energy and the Utility entered into a Natural Gas Purchase and Sale Transaction Confirmation and Agreement ("Transaction Confirmation"), pursuant to which Koch Energy would deliver up to a contractually-stipulated volume of gas per day to the Utility from November 1, 2019 to October 31, 2021 at a tiered contract price derived from the posted Platts Gas Daily, 'Daily Price Survey Section.'

15. During February 2021, Koch Energy delivered natural gas to the Utility pursuant to the Base Contract between the parties.

16. Koch Energy submitted an invoice to the Utility for February 2021 totaling \$23,084,913.47. The invoice is consistent with the volume of natural gas purchased by the Utility and sold by Koch Energy in February 2021 and the purchase price calculation dictated by the Transaction Confirmation.

B. The Utility Fails to Pay Koch Energy for the Gas Delivered.

17. Koch Energy delivered certain volumes of natural gas to the Utility pursuant to the parties' Base Contract and Transaction Confirmation from February 1–28, 2021.

18. Koch Energy maintains a systematic record of the amount of gas delivered to the Utility. In the normal course of business, Koch Energy submits monthly invoices to the Utility for the prior month's gas deliveries. Koch Energy's monthly gas delivery invoices are an accurate account of the monies owed by the Utility to Koch Energy for the prior month's gas deliveries.

19. Koch Energy sent its monthly gas delivery invoice, dated March 12, 2021, to the Utility for gas deliveries during February 2021, which showed that the Utility owed Koch Energy \$23,084,913.47 for delivery of natural gas. The Utility's payment for this invoice was due to Koch Energy on March 25, 2021 pursuant to the Base Contract and as indicated in the invoice. However, the Utility did not timely pay Koch Energy's invoice dated March 12, 2021.

20. The Utility initially conceded the outstanding invoice as due and owing. It made two payments against the invoice for February 2021 natural gas sales in March and April 2021, totaling \$1,859,046.46. The remaining balance of \$21,225,867.01 remains due and owing.

21. To date, the Utility still has not paid the February 2021 invoice in full and has refused to respond to Koch Energy's request to discuss the issue further.

22. To the extent that the Utility disputes the amount of the February 2021 invoice, the Utility has failed to provide supporting documentation acceptable in industry practice to support the amount disputed, as required by the Base Contract.

C. The Utility Takes Out a \$22 Million Bond to Pay Koch Energy.

23. The Utility has taken out a substantial bond to pay Koch Energy's invoices, and it has acknowledged publicly that it owes Koch Energy funds for the gas delivered to the Utility

during the February 2021 winter weather event.

24. On March 3, 2021, a Gas System Revenue Bond over \$26 million was issued to the City of Grey Forest, with a maturity date of March 2, 2029, primarily to pay the Utility's contractual obligations to Koch Energy following the February 2021 winter weather event.

25. On September 30, 2021, the Utility published an "update for GFU Customers regarding gas pricing" on its Web site.¹ In this "update," the Utility states, "the GFU Board of Trustees and the Grey Forest City council voted to obtain a bond in the amount of approximately \$22 Million to be repaid over an 8-year period to secure eventual payments that may be due to Koch Energy Services for gas supplied to the utility during the winter storm that occurred during the month of February 2021. This would allow the Utility to spread out any amounts owed to us by our customers over a long period of time."

26. Despite its public statements and actions indicating the Utility's acknowledgment of its outstanding debt to Koch Energy, it has ceased responding to communications from Koch Energy.

COUNT I: BREACH OF CONTRACT

27. Koch Energy incorporates the factual allegations above by reference as if set forth fully herein.

28. The Base Contract and Transaction Confirmation are valid and enforceable contracts between Koch Energy and the Utility.

29. Koch Energy fully performed under the Base Contract and Transaction Confirmation by providing certain volumes of natural gas to the Utility during February 2021.

¹ Grey Forest Utilities, *An Update for GFU Customers Regarding Gas Pricing* (Sept. 30, 2021), <https://www.gfugas.com> (last visited Jan 11, 2022).

30. The Utility failed to perform under the Base Contract and Transaction Confirmation, as described above, which constitutes breach of contract.

31. As a result of the Utility's breach of contract, Koch Energy has incurred \$21,225,867.01 in economic damages.

CONDITIONS PRECEDENT

32. All conditions precedent to the assertion of each claim made by Koch Energy have been performed, have occurred, or are excused.

ATTORNEY'S FEES

33. Koch Energy is entitled to reasonable attorney's fees and costs under Chapter 38 of the Texas Civil Practices & Remedies Code.

PRAYER FOR RELIEF

Koch Energy respectfully requests the Court: (1) order the Utility to pay Koch Energy's damages for the Utility's breach of contract; (2) grant Koch Energy costs and reasonable attorney's fees as are equitable and just; (3) grant pre- and post-judgment interest and (4) order and grant such other and further relief to which Koch Energy may be justly entitled.

Respectfully submitted,

MCDOWELL HETHERINGTON LLP

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**ATTORNEYS FOR KOCH ENERGY
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